

REMARKS

Status of the Claims

Pending claims

Claims 1 to 8 are currently pending. Claims 6 to 8 have been withdrawn from consideration.

Claims amended, canceled and added in the instant amendment

In the present response, claims 1 and 2 are amended, claims 6 to 8 are canceled, without prejudice, and claims 9 to 23 are added. Accordingly, after the entry of the instant amendment, claims 1 to 5 and 9 to 23 will be pending and under examination.

Restriction Requirement and Election

In the restriction requirement January 31, 2003, the Patent Office alleged that the pending claims of the application were directed four separate and distinct inventions under 35 U.S.C. §121.

Group I: Claims 1-5, drawn to a computer readable medium having stored thereon a nucleotide sequence (SEQ ID NO:1);

Group II: Claim 1-5, drawn to a computer readable medium having stored thereon an amino acid sequence (SEQ ID NO:2);

Group III: Claims 6-8, drawn to a method for comparing a first sequence (SEQ ID NO:1) to a reference; and

Group IV: Claims 6-8, drawn to a method for comparing a first sequence (SEQ ID NO:2) to a reference.

In response to the Restriction Requirement, Applicants elected Group I, claims 1-5, drawn to a computer readable medium having stored thereon a nucleotide sequence (SEQ ID NO:1), with traverse. In that response, Applicants gave reasons to reconsider and withdraw restriction requirement, and thus preserved their rights under 37 C.F.R. §1.144 by distinctly and specifically pointing out errors in the restriction requirement.

Outstanding Rejections

Claim 1 is rejected under 35 USC §101. Claims 1 to 5 are rejected under 35 USC §102(b) as allegedly anticipated by Gelfand, et al., NCBI Database Accession Number I17570,

October 7, 1996. Applicants respectfully traverse all outstanding objections to the specification and rejections of the claims.

Support for Claim Amendments

The specification sets forth an extensive description of the invention in the new and amended claims. Support for claims directed to sequences of the invention having various sequence identities over various lengths to exemplary sequence of the invention can be found, inter alia, on page 14, lines 16 to 24, and page 36, lines 5 to 32, and the paragraph spanning pages 37 to 38, of the specification. Support for claims directed to computer readable mediums, computers, computer program products, computer systems and the like, and the sequences of the invention can be found, inter alia, on page 56, line 22 to page 69, line 27, of the specification. Applicants submit that no new matter is introduced by the present amendments.

Sequence Listing

Applicants thank the Examiner for noting a sequence listing complying with 37 CFR §1.821 through §1.825, has not yet been filed. A conforming sequence listing is being submitted under a separate cover.

Issues under 35 U.S.C. §101

The Patent Office has rejected claim 1 under 35 USC §101 for allegedly being directed to non-statutory subject matter, because, inter alia, it does not contain requisite functionality to satisfy the statute. The instant amendment addresses this issue.

Issues under 35 U.S.C. §102

Gelfand, et al., NCBI Database Accession Number I17570

Claims 1 to 5 are rejected under 35 USC §102(b) as allegedly anticipated by Gelfand, et al., NCBI Database Accession Number I17570. In particular, it is alleged that Gelfand, et al., teaches a nucleic acid having 66.5% sequence identity to the exemplary SEQ ID NO:1 of the instant invention.

The legal standard for anticipation under 35 U.S.C. §102 is one of strict identity. To anticipate a claim, a single prior source must contain each and every limitation of the claimed invention.

The instant amendment addresses this issue. After entry of the instant amendment, the claimed invention will be directed to, inter alia, computer readable mediums, computer program products, etc. having stored thereon, using and/or comprising, a nucleic acid sequence having at least 70% sequence identity to a region of at least about 100 residues of a sequence as set forth in SEQ ID NO:1, or a nucleic acid sequence encoding a polypeptide sequence having at least 70% sequence identity to a region of at least about 100 residues of a sequence as set forth in SEQ ID NO:2.

CONCLUSION

In view of the foregoing amendment and remarks, Applicants respectfully aver that the Examiner can properly withdraw the rejection of the pending claims under 35 U.S.C. §101 and 35 U.S.C. §102. Applicants respectfully submit that all claims pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

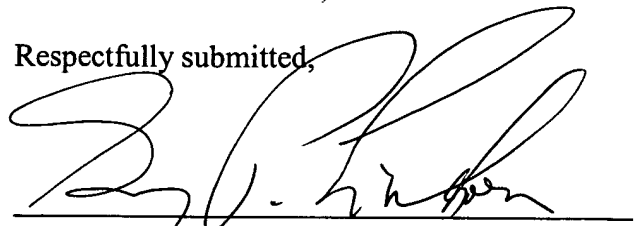
If, in the Examiner's opinion, a telephonic interview would expedite the favorable prosecution of the present application, the undersigned attorney would welcome the opportunity to discuss any outstanding issues and to work with the Examiner toward placing the application in condition for allowance.

If any necessary additional such fees are due, the Commissioner is hereby authorized to charge any such fees to Deposit Account No. 06-1050. Overcharges can be credited to the same account.

Date:

Aug 23, 2003

Respectfully submitted,



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